

11/5/09

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



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ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

OCT 21 2009

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY

DATE: October 16, 2009

RE: Proposed Order re: Robert Franklin Hockensmith
Docket No. S-20631A-08-0503

CC: Ernest G. Johnson, Executive Director

Attached is a proposed Order to Cease and Desist, Order for Restitution, of Revocation, and Consent to Same ("Order"), fully executed by Respondent Robert Franklin Hockensmith. The proposed Order requires Respondent to cease and desist from violations of the Arizona Securities Act and to pay restitution in the amount of \$200,000.00. Respondent solicited investments in a company that offered profits from a foreign currency exchange ("forex") program.

Pursuant to the proposed order, Mr. Hockensmith's securities salesman registration will be revoked, and Mr. Hockensmith has agreed not to reapply for registration as a securities salesman or dealer, or licensure as an investment advisor or investment advisor representative at any time in the future. Respondent has agreed to pay \$100,000.00 in restitution at the time of entry of the proposed Order.

The Division supports this proposed Order as serving the public interest.

Originator: Pam Johnson

MN/ptj

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
 BOB STUMP

| | | | |
|----|-----------------------------|---|---|
| 7 | In the matter of: |) | DOCKET NO. S-20631A-08-0503 |
| 8 | ROBERT FRANKLIN HOCKENSMITH |) | DECISION NO. _____ |
| 9 | JR., CRD# 1798614 |) | ORDER TO CEASE AND DESIST, ORDER |
| 10 | Respondent. |) | FOR RESTITUTION, OF REVOCATION AND |
| | |) | CONSENT TO SAME |

11 Respondent ROBERT FRANKLIN HOCKENSMITH JR. ("Respondent") elects to
12 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
13 of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And
14 Desist, Order for Restitution, of Revocation, and Consent to Same ("Order"). Respondent admits
15 the jurisdiction of the Arizona Corporation Commission ("Commission"). Respondent consents to
16 entry of the Order without admitting or denying any of the Findings of Fact and Conclusions of
17 Law contained in the Order, without trial of any issue of fact or law pertaining to this Order and
18 provided that no Findings of Fact or Conclusions of Law contained in the Order shall be attributed
19 to, effective against or binding upon Respondent for any purpose other than in this case or any
20 other proceeding before the Commission involving Respondent. Nothing herein shall have any
21 collateral estoppel or res judicata effect against the Respondent for any purpose except for any
22 proceeding before the Commission involving Respondent. Respondent consents to the entry of this
23 Order by the Commission.
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25
26

I.

FINDINGS OF FACT

1. ROBERT FRANKLIN HOCKENSMITH JR. ("Respondent"), CRD# 1798614, was at all pertinent times a resident of Glendale, Arizona, and a registered securities salesman affiliated with H.D. Vest Investment Services, Inc. ("H.D. Vest"), an Arizona registered securities dealer, from November 5, 1999, until he was discharged on or around April 17, 2008, for allegedly engaging in selling away, sale of unregistered securities, and accepting personal loans from customers, relating to the transactions that are the subject of this action.

2. At all pertinent times, Respondent provided investment advice to H.D. Vest customers through H.D. Vest Advisory Services, a non-bank subsidiary of Wells Fargo and Company.

3. Respondent is and was at all pertinent times licensed by the Arizona Board of Accountancy as a certified public accountant ("CPA"). Respondent owns a CPA firm, Robert F. Hockensmith, P.C. ("RFH"), an Arizona professional corporation through which, at all pertinent times, Respondent provided tax planning and preparation, accounting, and consulting services to around 350 customers. Respondent was licensed by the Arizona Department of Insurance through February 2009 as a producer, authorized to sell variable life and annuity products and life and health policies.

4. At all pertinent times, Respondent held himself out to his customers as having expertise in providing tax, financial planning and investment advisory services. Respondent's letterhead, e-mails, and fax cover sheets listed Respondent's credentials and affiliations as follows: Certified Public Accountant, Certified Financial Planner, Certified Senior Advisor, and Certified Legal Document Preparer, offering securities through H.D. Vest and advisory services through H.D. Vest Advisory Services.

1 **A. Respondent Offered and Sold Unregistered Securities.**

2 5. Beginning around August 2006, Respondent offered and sold unregistered securities
3 in the form of investment contracts and/or commodity investment contracts to customers of his
4 CPA firm, including several H.D. Vest customers. These securities involved a pooling of
5 investors' money in a foreign bank account under the name of a foreign entity controlled by a
6 trader, who was to use the funds to purchase and sell foreign currencies on a foreign currency
7 exchange ("forex").

8 6. Beginning sometime in 2006, during tax preparation and financial planning
9 discussions with customers, Respondent mentioned that he could introduce his customers to an
10 investment opportunity that would increase customers' monthly income and also had some tax
11 advantages.

12 7. Respondent told his customers that Respondent and his family had invested large
13 amounts of their own money in these investments, and were receiving large profits. Respondent
14 showed his customers on his computer screen purported earnings from daily trades. Respondent
15 told customers that they could watch their profits grow daily on their own computer screens.

16 8. Respondent told his customers that they could withdraw their profits each month, or
17 leave them in the investment to earn more profits.

18 9. Respondent told customers that they needed cash in the amount of \$100,000.00 for
19 an initial investment, which would provide profits averaging \$4,000.00 per month.

20 10. Respondent told his customers that a highly skilled trader named James Roberts
21 ("Roberts"), through a company called FOMAC International, Inc. ("FOMAC"), had developed a
22 trading strategy that Roberts had used successfully for several years to make large profits for
23 individual investors.

24 11. Respondent told his customers that their investment funds would be pooled with
25 other investors' funds and that Roberts would have complete discretion over how to use their funds
26 to generate profits through trading foreign currencies daily.

1 12. Respondent told his customers that he had observed Roberts' trading in the FOMAC
2 program, and that the FOMAC program produced monthly profits varying between 3.25% and
3 20.46%.

4 13. Most of Respondent's customers had no knowledge concerning foreign currency
5 trading, and invested in these securities based solely upon the information that Respondent
6 provided to them and the confidence they had in Respondent's expertise in financial matters.

7 14. Respondent did not tell his customers that the FOMAC investments were securities,
8 or that these securities were not registered with any state or federal regulatory authority.

9 15. Respondent gave his customers FOMAC's wiring instructions, telling them how to
10 wire their funds directly from their own bank accounts to an account in Costa Rica, for the benefit
11 of a foreign entity called Consultores Las Tres Americas S.A.

12 16. Respondent distributed FOMAC's application forms to customers in Respondent's
13 own office in Glendale, Arizona. The FOMAC documents described the investment as "deposits"
14 in a "managed account program."

15 17. The FOMAC application forms included: (a) a "Client Registration and Deposit
16 Form and Application for Membership;" (b) a "Letter of Intent & Non-Circumvention and Non-
17 Disclosure Agreement;" (c) "International Bank Wiring instructions for Your Bank and Your Bank
18 Account;" (d) "FOMAC Last Will and Testament;" and (e) Rules and Regulations.

19 18. The FOMAC Rules and Regulations contained the following introductory
20 statement:

21 FOMAC MANAGED ACCOUNTS has been created with a view to
22 the needs of depositors who wish to take advantage of the lucrative
23 international Foreign Currency Exchange (FOREX), heretofore
24 available only to large banks and business corporations. It will give
25 the small working class depositor the opportunity to take advantage of
26 the attractive high yields possible through FOREX trading and realize
a steady monthly income to supplement his or her regular income or
retirement income.

1 This introduction was followed by 15 statements explaining how the program worked, including
2 (1) that there would be no membership fee; (2) that the minimum initial deposit would be
3 US\$25,000.00; (3) that "Funds deposited will be utilized in the FOREX international trading
4 market and the proceeds realized will be divided 50%-50% between the Client and FOMAC
5 INTERNATIONAL;" and (4) that "Each depositor will be expected to maintain a quiet and low
6 profile regarding registration with FOMAC."

7 19. Respondent, or his office assistants, filled out most of the information on the
8 application forms for his customers' investments in the FOMAC program, so that Respondent's
9 customers only needed to sign the forms. Respondent's customers signed their application forms
10 in Respondent's office. Respondent and his office assistants even witnessed the investors'
11 signatures on the Last Will and Testament forms.

12 20. Respondent created a form letter to "Jim Roberts" for his customers to sign, which
13 instructed Roberts as follows: "One percent of the assets of this account are to be deposited into
14 Robert Hockensmith's account each month." After having his customers sign the letters,
15 Respondent sent the letters to Roberts with the FOMAC application forms, in most cases without
16 even giving his customers a copy of the "fee" instructions.

17 21. Respondent told some of his customers that he was so confident in the success of
18 the program that he was mortgaging everything he owned, including his rental properties and his
19 own home, and was borrowing money to invest as much money as he could get hold of in the
20 FOMAC program. Respondent and his accounting firm and his sister invested approximately
21 \$1,770,000.00 in FOMAC, and lost approximately \$1,220,000 when the scheme collapsed in July
22 2007.

23 22. From August 2006 through July 2007, Respondent sold FOMAC securities to
24 around 37 customers of his CPA firm. Seventeen of these customers were also customers of H.D.
25 Vest. Respondent's customers invested approximately \$8,000,000.00 in these FOMAC securities,
26 through Respondent's efforts and lost approximately \$6,000,000.00.

1 23. Some of Respondent's customers invested their life's savings in FOMAC. Some of
2 Respondent's customers cashed out other safer investments, such as annuities, IRAs, or life
3 insurance policies, incurring withdrawal penalties or tax liabilities. Other customers borrowed
4 funds to invest, incurring monthly interest payment obligations on the loans, in order to receive the
5 monthly income expected from these securities investments.

6 24. In or around August 2007, FOMAC failed to pay Respondent monthly profits
7 reflected on Respondent's FOMAC computer print-outs. Roberts failed to respond to several of
8 Respondent's telephone calls and emails, except to tell Respondent that he had retained an attorney
9 who had instructed him not to speak to anyone about FOMAC.

10 25. In or around August 2007, Respondent telephoned and emailed his FOMAC
11 customers and scheduled meetings with many of them in his office. Respondent told his customers
12 that FOMAC was a fraud, and that they had all lost their money. Respondent told his customers
13 that Respondent had reported the fraud to the FBI, and that they could contact the FBI to report
14 their losses.

15 26. In or around late August and September 2007, the US Department of Justice Victim
16 Notification System sent FOMAC investors emails, alerting them that on August 31, 2007, the
17 Securities and Exchange Commission ("SEC") had filed a Temporary Restraining Order ("TRO")
18 against Roberts, d/b/a FOMAC and Consultores Las Tres Americas, in the U.S. District Court in
19 Little Rock, Arkansas, to halt the alleged ongoing Ponzi scheme and freeze assets for the benefit of
20 defrauded investors. The SEC's complaint in *SEC v. James B. Roberts, FOMAC International,*
21 *Inc., and Consultores Las Tres Americas S.A.*, Civil Action No. 4.07.CV.786 (JLH)(U.S.D.C./E.D.
22 Ark. August 31, 2007), alleged that the defendants raised at least \$50 million since 2002 from
23 approximately 450 investors located primarily in the U.S. and Costa Rica; and that as early as
24 2005, the defendants experienced significant losses while trading investor funds in the Forex
25 markets, misappropriated at least \$3 million, and then used new investor money to pay returns and
26 principal to existing investors.

27. On or about May 20, 2008, the U.S. Department of Justice Victim Notification System of the FBI in Little Rock, Arkansas, notified FOMAC investors that "on May 27, 2008, James B. Roberts, doing business as FOMAC international, Inc. and Consultores Las Tres Americas, SA, entered a plea of guilty to a one count information charging him with Wire Fraud" under the United States Criminal Code.

B. Respondent Violated Rules of His Dealers And The Commission.

28. Respondent violated rules of his dealer that prohibit engaging in conduct involving “outside business activities” and “private securities transactions,” by failing to provide written notification to his dealer in advance of offering the FOMAC securities to his customers, and failing to request and receive written authorization from his dealer before engaging in such activities.

29. Respondent engaged in conduct prohibited by his dealer by effecting securities transactions that were not recorded on the records of the dealer with whom Respondent was registered at the time of the transactions, a prohibited sales practice known as "selling away."

30. Respondent violated rules of his dealer and the Commission by borrowing \$200,000.00 from one of his H.D. Vest customers, which Respondent used to purchase FOMAC securities for himself. Respondent has repaid the customer in full.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondent's conduct subjects Respondent to an order of revocation pursuant to A.R.S. § 44-1962(A)(2), by violating A.R.S. § 44-1841, and pursuant to A.R.S. § 44-1962(A)(10)

1 by engaging in conduct pursuant A.A.C. Rule R14-4-130(A)(15), by borrowing money from a
2 customer that was not a relative of the salesman or a person in the business of lending funds and
3 A.A.C. R14-4-130(A)(17), by effecting securities transactions that were not recorded on the
4 records of the dealer with whom he was registered at the time of the transactions.

5 5. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S.
6 § 44-2032 and A.R.S. § 44-1962.

7 6. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
8 2032 and A.R.S. § 44-1962.

9 III.

10 ORDER

11 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's
12 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
13 that the following relief is appropriate, in the public interest, and necessary for the protection of
14 investors:

15 IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962, that Respondent,
16 and any of Respondent's agents, employees, successors and assigns, permanently cease and desist
17 from violating the Securities Act.

18 IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry
19 of Order.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962, that
21 Respondent shall pay restitution to the Commission in the amount of \$200,000.00. Payment shall
22 be made in installments as follows: \$100,000.00 on the date of this Order and the remaining
23 balance to be paid in semi-annual installments of \$12,500.00 to be made on or before the 1st day of
24 May and on or before the 1st day of November of each year beginning May 1, 2010 until paid in
25 full. Respondent shall turn over all payments received from the FOMAC Receiver to be applied to
26 the outstanding balance due under this paragraph until paid in full. Payment shall be made to the

1 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. If
2 Respondent does not make any payment when due under the terms of this paragraph any
3 outstanding balance shall be deemed in default, be immediately due and payable, and shall accrue
4 interest at the rate of 10% per annum until paid in full.

5 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
6 records of the Commission. Any restitution funds that the Commission cannot disburse because an
7 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
8 investor because the investor is deceased and the Commission cannot reasonably identify and
9 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
10 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
11 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
12 disburse shall be transferred to the general fund of the state of Arizona.

13 IT IS FURTHER ORDERED that Respondent cooperate with the Division in providing a
14 complete accounting of all distributions paid to FOMAC investors who were his clients at the time
15 that they invested in FOMAC.

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent's securities
17 salesman registration is revoked.

18 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
19 Respondent does not comply with this Order, any outstanding balance may be deemed in default
20 and shall be immediately due and payable.

21 ..

22 ..

23 ..

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26 ..

IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the Commission may bring further legal proceedings against Respondent including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(ptj)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent Robert Franklin Hockensmith Jr. ("Respondent"), an individual, admits
3 the jurisdiction of the Commission over the subject matter of this proceeding. Respondent
4 acknowledges that Respondent has been fully advised of Respondent's right to a hearing to present
5 evidence and call witnesses and Respondent knowingly and voluntarily waives any and all rights
6 to a hearing before the Commission and all other rights otherwise available under Article 11 of the
7 Securities Act and Title 14 of the Arizona Administrative Code. Respondent acknowledges that
8 this Order To Cease And Desist, Order for Restitution, of Revocation, and Consent to Same
9 ("Order") constitutes a valid final order of the Commission.

10 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondent acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondent acknowledges that Respondent has been represented by an attorney in
16 this matter, Respondent has reviewed this Order with Respondent's attorney, Paul J. Roshka, and
17 understands all terms it contains.

18 5. Respondent consents to entry of the Order without admitting or denying any of the
19 Findings of Fact and Conclusions of Law contained in the Order, without trial of any issue of fact
20 or law pertaining to this Order and provided that no Findings of Fact or Conclusions of Law
21 contained in the Order shall be attributed to, effective against or binding upon Respondent for any
22 purpose other than in this case or any other proceeding before the Commission involving
23 Respondent. Nothing herein shall have any collateral estoppel or res judicata effect against the
24 Respondent for any purpose except for any proceeding before the Commission involving
25 Respondent.
26

1 6. By consenting to the entry of this Order, Respondent agrees not to take any action
2 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
3 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
4 factual basis. Respondent will undertake steps necessary to assure that all of Respondent's agents
5 and employees understand and comply with this agreement.

6 7. While this Order settles this administrative matter between Respondent and the
7 Commission, Respondent understands that this Order does not preclude the Commission from
8 instituting other administrative or civil proceedings based on violations that are not addressed by
9 this Order.

10 8. Respondent understands that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. Respondent understands that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. Respondent agrees that Respondent will not apply to the state of Arizona for
17 registration as a securities dealer or salesman or for licensure as an investment adviser or
18 investment adviser representative at any time in the future.

19 11. Respondent agrees that Respondent will not sell any securities in or from Arizona
20 without being properly registered in Arizona as a dealer or salesman, or exempt from such
21 registration; Respondent will not sell any securities in or from Arizona unless the securities are
22 registered in Arizona or exempt from registration; and Respondent will not transact business in
23 Arizona as an investment adviser or an investment adviser representative unless properly licensed
24 in Arizona or exempt from licensure.

25 12. Respondent consents to the entry of this Order and agrees to be fully bound by its
26 terms and conditions.

13. Respondent acknowledges and understands that if Respondent fails to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

14. Respondent understands that default shall render Respondent liable to the Commission for its costs of collection and interest at the maximum legal rate.

15. Respondent agrees and understands that if Respondent fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondent agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by Commission.


ROBERT F. HOCKENSMITH

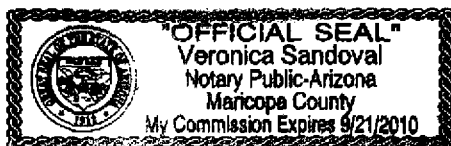
STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 4th day of September, 2009.


NOTARY PUBLIC

My commission expires:

9/21/2010



SERVICE LIST FOR:

ROBERT F. HOCKENSMITH, JR.
CRD #1798614

ORDER TO CEASE AND DESIST, ORDER
FORRESTITUTION, ORDER OF
REVOCATION AND CONSENT TO SAME

DOCKET NO.:

S-20631A-08-503

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